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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3212 of 2001
Date of decision: 27.11.2007

Chaman Lal **...Appellant**

Versus

Suraj Parkash and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. K.S.Dadwal, Advocate for the appellant.

Mr. Hemant Saini, Advocate for respondent no.1

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RAJESH BINDAL, J.

The plaintiff is in second appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit filed by him for permanent injunction restraining respondent no.1/defendant no.1 from interfering in any manner or dispossessing the appellant/plaintiff from the double storeyed shop as mentioned in the plaint was dismissed.

The claim was sought to be made on the basis that shop in dispute was initially allotted to respondent no.1 by the Wakf Board on rent. At the time of shifting to Yamuna Nagar, he handed over the possession thereof to respondent no. 2/defendant no.2 in March, 1986. In 1993, respondent no.2 handed over the possession of the premises in dispute back to the Wakf Board and thereafter the same was allotted in favour of the present appellant by the Wakf Board, ever since then he is in legal possession thereof and is paying the rent for the same.

However, considering the contentions raised by the respondent, the Courts below did not find any merit in the plea raised by the appellant/plaintiff for the reason that while leaving for Yamuna Nagar, respondent no.1 asked respondent no.2 to take care of the shop, who was running his vegetable business on Rehri out side the shop. It was somewhere in 1986. However, when he came back in around 1988, he found that respondent no. 2 had occupied the shop. Immediately he filed a

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suit against respondent no.2 by impleading Wakf Board also as a party. The suit was decreed on September 22, 1990 holding respondent no.1 as tenant in the shop. In the execution of the decree, the objections were raised by the present appellant, inter-alia, on the ground that same cannot be executed against him as he was not a party to the decree. However, as informed by learned counsel for appellant that his objections were dismissed and revision against that was filed in this Court, which though was dismissed in default but the application for restoration thereof is pending. However, still his claim was only on the basis of fresh allotment of letter issued in his favour by the Wakf Board on February 10, 1994 showing Dayal Chand/respondent no. 2, to be earlier tenant in the shop. Once Wakf Board was party to the earlier litigation between respondent nos. 1 and 2 wherein vide judgment and decree dated September 22, 1990 it was specifically held that respondent no.1 was the tenant in the shop in dispute, there was no occasion for the Wakf Board to have allotted the shop in favour of present appellant on February 10, 1994 by showing Dayal Chand as previous tenant in the shop. No material was produced by the appellant to show how the allotment came to be made in favour of Dayal Chand and subsequently in his favour inspite of the decree. In the suit, appellant did not even implead Wakf Board as a party. The reliance on the affidavit of Dayal Chand dated July 21, 1986 in the present proceeding is also of no help to the present appellant as same pertained to rights, if any, between respondents no.1 and 2 and the same could very well be referred to and relied upon in the earlier lis between respondents no.1 and 2 in which a decree was passed in favour of respondent no.1 holding him to be tenant under the Wakf Board. There is no other material on record referred to by the counsel for the appellant which could lead this Court to the conclusion that the findings recorded by the Courts below are perverse in any manner.

Accordingly, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

November 27, 2007 **(Rajesh Bindal)**
Pka **Judge**